

S. CON. RES. 77

CONCURRENT RESOLUTION

1 *Resolved by the Senate (the House of Representatives*
2 *concurring)*, That the following regulations issued by the
3 Office of Compliance on March 21, 2008, and stated in
4 section 4, with the technical corrections described in sec-
5 tion 3 and to the extent applied by section 2, are hereby
6 approved:

7 **SEC. 2. APPLICATION OF REGULATIONS.**

8 (a) IN GENERAL.—For purposes of applying the
9 issued regulations as a body of regulations required by sec-
10 tion 304(a)(2)(B)(iii) of the Congressional Accountability
11 Act of 1995 (2 U.S.C. 1384(a)(2)(B)(iii)), the portions
12 of the issued regulations that are unclassified or classified
13 with a “C” designation shall apply to all covered employ-
14 ees that are not employees of the House of Representa-
15 tives or employees of the Senate, and employing offices
16 that are not offices of the House of Representatives or
17 the Senate.

18 (b) DEFINITIONS.—In this section, the terms “em-
19 ployee of the House of Representatives”, “employee of the

1 Senate”, “covered employee”, and “employing office” have
 2 the meanings given the terms in section 101 of the Con-
 3 gressional Accountability Act of 1995 (2 U.S.C. 1301), ex-
 4 cept as limited by the regulations (as corrected under sec-
 5 tion 3).

6 **SEC. 3. TECHNICAL CORRECTIONS.**

7 (a) CURRENT NAMES OF OFFICES AND HEADS OF
 8 OFFICES.—A reference in the issued regulations—

9 (1) to the Capitol Guide Board or the Capitol
 10 Guide Service (which no longer exist) shall be con-
 11 sidered to be a reference to the Office of Congres-
 12 sional Accessibility Services;

13 (2) to the Capitol Police Board shall be consid-
 14 ered to be a reference to the Capitol Police;

15 (3) to the Senate Restaurants (which are no
 16 longer public entities) shall be disregarded; and

17 (4) in sections 1.110(b) and 1.121(c), to the di-
 18 rector of an employing office shall be considered to
 19 be a reference to the head of an employing office.

20 (b) CROSS REFERENCES TO PROVISIONS OF REGU-
 21 LATIONS.—A reference in the issued regulations—

22 (1) in paragraphs (l) and (m) of section 1.102,
 23 to subparagraphs (3) through (8) of paragraph (g)
 24 of that section shall be considered to be a reference
 25 to paragraph (g) of that section;

(2) in section 1.102(l), to subparagraphs (aa) through (dd) of section 1.102(g) shall be considered to be a reference to subparagraphs (aa) through (dd) of that section (as specified in the regulations classified with an “H” classification);

(3) in section 1.102(m), to subparagraphs (aa) through (ee) of section 1.102(g) shall be considered to be a reference to subparagraphs (aa) through (ee) of that section (as specified in the regulations classified with an “S” classification);

(4) in section 1.111(d), to section 1.102(o) shall be considered to be a reference to section 1.102(p); and

(5) in section 1.112, to section 1.102(h) shall be considered to be a reference to section 1.102(i).

(c) CROSS REFERENCES TO OTHER PROVISIONS OF LAW.—A reference in the issued regulations—

(1) to the Veterans Employment Opportunities Act shall be considered to be a reference to the Veterans Employment Opportunities Act of 1998;

(2) to 2 U.S.C. 43d(a) shall be considered to be a reference to section 105(a) of the Second Supplemental Appropriations Act, 1978;

1 (3) to 2 U.S.C. 1316a(3) shall be considered to
2 be a reference to section 4(c)(3) of the Veterans
3 Employment Opportunities Act of 1998;

4 (4) to 5 U.S.C. 2108(3)(c) shall be considered
5 to be a reference to section 2108(3)(C) of title 5,
6 United States Code;

7 (5) to the Americans with Disabilities Act shall
8 be considered to be a reference to the Americans
9 with Disabilities Act of 1990;

10 (6) to the Soil Conservation and Allotment Act
11 shall be considered to be a reference to the Soil Con-
12 servation and Domestic Allotment Act; and

13 (7) to the Agricultural Adjustment Act shall be
14 considered to be a reference to the Agricultural Ad-
15 justment Act, reenacted with amendments by the
16 Agricultural Marketing Agreement Act of 1937.

17 (d) OTHER CORRECTIONS.—In the issued regula-
18 tions—

19 (1) section 1.109 shall be considered to have an
20 “and” after paragraph (a);

21 (2) the second sentence of section 1.116 shall
22 be disregarded;

23 (3) section 1.118(b) shall be considered to have
24 an “and” after paragraph (2) rather than paragraph
25 (1);

1 (4) a reference in sections 1.118(c)(1) and
2 1.120(b)(1) to veterans’ “preference eligible” shall
3 be considered to be a reference to “preference eligi-
4 ble”;

5 (5) sections 1.118(c) and 1.120(b) shall be con-
6 sidered to have an “and” after paragraph (1); and

7 (6) section 1.121(b)(6)(B) shall be considered
8 to have an “and” at the end.

9 **SEC. 4. REGULATIONS.**

10 When approved by the House of Representatives for
11 the House of Representatives, these regulations will have
12 the prefix “H.” When approved by the Senate for the
13 Senate, these regulations will have the prefix “S.” When
14 approved by Congress for the other employing offices cov-
15 ered by the CAA, these regulations will have the prefix
16 “C.”

17 **In this draft, “H&S Regs” denotes the**
18 **provisions that would be included in the reg-**
19 **ulations applicable to be made applicable to**
20 **the House and Senate, and “C Reg” denotes**
21 **the provisions that would be included in the**
22 **regulations to be made applicable to other**
23 **employing offices.**

24 PART 1—Extension of Rights and Protections Re-
25 lating to Veterans’ Preference Under Title 5, United

1 States Code, to Covered Employees of the Legislative
 2 Branch (section 4(c) of the Veterans Employment Oppor-
 3 tunities Act of 1998)

SUBPART A—MATTERS OF GENERAL APPLICABILITY TO ALL REGULATIONS
 PROMULGATED UNDER SECTION 4 OF THE VEOA

Sec.

1.101 Purpose and scope.

1.102 Definitions.

1.103 Adoption of regulations.

1.104 Coordination with section 225 of the Congressional Accountability Act.

4 **SEC. 1.101. PURPOSE AND SCOPE.**

5 (a) Section 4(c) of the VEOA. The Veterans Employ-
 6 ment Opportunities Act (VEOA) applies the rights and
 7 protections of sections 2108, 3309 through 3312, and sub-
 8 chapter I of chapter 35 of title 5 U.S.C., to certain covered
 9 employees within the Legislative branch.

10 (b) Purpose of regulations. The regulations set forth
 11 herein are the substantive regulations that the Board of
 12 Directors of the Office of Compliance has promulgated
 13 pursuant to section 4(c)(4) of the VEOA, in accordance
 14 with the rulemaking procedure set forth in section 304 of
 15 the CAA (2 U.S.C. § 1384). The purpose of subparts B,
 16 C and D of these regulations is to define veterans' pref-
 17 erence and the administration of veterans' preference as
 18 applicable to Federal employment in the Legislative
 19 branch. (5 U.S.C. § 2108, as applied by the VEOA). The
 20 purpose of subpart E of these regulations is to ensure that
 21 the principles of the veterans' preference laws are inte-
 22 grated into the existing employment and retention policies

1 and processes of those employing offices with employees
 2 covered by the VEOA, and to provide for transparency in
 3 the application of veterans' preference in covered appoint-
 4 ment and retention decisions. Provided, nothing in these
 5 regulations shall be construed so as to require an employ-
 6 ing office to reduce any existing veterans' preference
 7 rights and protections that it may afford to preference eli-
 8 gible individuals.

9 **H Regs:** (c) Scope of Regulations. The definition
 10 of "covered employee" in Section 4(c) of the VEOA lim-
 11 its the scope of the statute's applicability within the Leg-
 12 islative branch. The term "covered employee" excludes
 13 any employee: (1) whose appointment is made by the
 14 President with the advice and consent of the Senate; (2)
 15 whose appointment is made by a Member of Congress
 16 within an employing office, as defined by Sec. 101 (9)(A-
 17 C) of the CAA, 2 U.S.C. § 1301 (9)(A-C) or; (3) whose
 18 appointment is made by a committee or subcommittee of
 19 either House of Congress or a joint committee of the
 20 House of Representatives and the Senate; or (4) who is
 21 appointed to a position, the duties of which are equiva-
 22 lent to those of a Senior Executive Service position (with-
 23 in the meaning of section 3132(a)(2) of title 5, United
 24 States Code). Accordingly, these regulations shall not

1 apply to any employing office that only employs individ-
 2 uals excluded from the definition of covered employee.

3 **S Regs:** (c) Scope of Regulations. The definition
 4 of “covered employee” in Section 4(c) of the VEOA lim-
 5 its the scope of the statute’s applicability within the Leg-
 6 islative branch. The term “covered employee” excludes
 7 any employee: (1) whose appointment is made by the
 8 President with the advice and consent of the Senate; (2)
 9 whose appointment is made or directed by a Member of
 10 Congress within an employing office, as defined by Sec.
 11 101(9)(A–C) of the CAA, 2 U.S.C. § 1301 (9)(A–C) or;
 12 (3) whose appointment is made by a committee or sub-
 13 committee of either House of Congress or a joint com-
 14 mittee of the House of Representatives and the Senate;
 15 (4) who is appointed pursuant to 2 U.S.C. § 43d(a); or
 16 (5) who is appointed to a position, the duties of which
 17 are equivalent to those of a Senior Executive Service po-
 18 sition (within the meaning of section 3132(a)(2) of title
 19 5, United States Code). Accordingly, these regulations
 20 shall not apply to any employing office that only employs
 21 individuals excluded from the definition of covered em-
 22 ployee.

23 **C Reg:** (c) Scope of Regulations. The definition
 24 of “covered employee” in Section 4(c) of the VEOA lim-
 25 its the scope of the statute’s applicability within the Leg-

1 islative branch. The term “covered employee” excludes
2 any employee: (1) whose appointment is made by the
3 President with the advice and consent of the Senate; (2)
4 whose appointment is made by a Member of Congress or
5 by a committee or subcommittee of either House of Con-
6 gress or a joint committee of the House of Representa-
7 tives and the Senate; or (3) who is appointed to a posi-
8 tion, the duties of which are equivalent to those of a Sen-
9 ior Executive Service position (within the meaning of sec-
10 tion 3132(a)(2) of title 5, United States Code). Accord-
11 ingly, these regulations shall not apply to any employing
12 office that only employs individuals excluded from the
13 definition of covered employee.

14 **SEC. 1.102. DEFINITIONS.**

15 Except as otherwise provided in these regulations, as
16 used in these regulations:

17 (a) Accredited physician means a doctor of medicine
18 or osteopathy who is authorized to practice medicine or
19 surgery (as appropriate) by the State in which the doctor
20 practices. The phrase “authorized to practice by the
21 State” as used in this section means that the provider
22 must be authorized to diagnose and treat physical or men-
23 tal health conditions without supervision by a doctor or
24 other health care provider.

1 (b) Act or CAA means the Congressional Account-
2 ability Act of 1995, as amended (Pub. L. 104–1, 109 Stat.
3 3, 2 U.S.C. §§ 1301–1438).

4 (c) Active duty or active military duty means full-time
5 duty with military pay and allowances in the armed forces,
6 except (1) for training or for determining physical fitness
7 and (2) for service in the Reserves or National Guard.

8 (d) Appointment means an individual’s appointment
9 to employment in a covered position, but does not include
10 any personnel action that an employing office takes with
11 regard to an existing employee of the employing office.

12 (e) Armed forces means the United States Army,
13 Navy, Air Force, Marine Corps, and Coast Guard.

14 (f) Board means the Board of Directors of the Office
15 of Compliance.

16 **H Regs:** (g) Covered employee means any em-
17 ployee of (1) the House of Representatives; and (2) the
18 Senate; (3) the Capitol Guide Board; (4) the Capitol Po-
19 lice Board; (5) the Congressional Budget Office; (6) the
20 Office of the Architect of the Capitol; (7) the Office of
21 the Attending Physician; and (8) the Office of Compli-
22 ance, but does not include an employee (aa) whose ap-
23 pointment is made by the President with the advice and
24 consent of the Senate; (bb) whose appointment is made
25 by a Member of Congress; (cc) whose appointment is

1 made by a committee or subcommittee of either House of
2 Congress or a joint committee of the House of Represent-
3 atives and the Senate; or (dd) who is appointed to a posi-
4 tion, the duties of which are equivalent to those of a Sen-
5 ior Executive Service position (within the meaning of sec-
6 tion 3132(a)(2) of title 5, United States Code). The term
7 covered employee includes an applicant for employment in
8 a covered position and a former covered employee.

9 **S. Regs:** (g) Covered employee means any em-
10 ployees of (1) the House of Representatives; and (2) the
11 Senate; (3) the Capitol Guide Board; (4) the Capitol Po-
12 lice Board; (5) the Congressional Budget Office; (6) the
13 Office of the Architect of the Capitol; (7) the Office of
14 the Attending Physician; and (8) the Office of Compli-
15 ance, but does not include an employee (aa) whose ap-
16 pointment is made by the President with the advice and
17 consent of the Senate; (bb) whose appointment is made
18 or directed by a Member of Congress; (cc) whose appoint-
19 ment is made by a committee or subcommittee of either
20 House of Congress or a joint committee of the House of
21 Representatives and the Senate; (dd) who is appointed
22 pursuant to 2 U.S.C. § 43d(a); or (ee) who is appointed
23 to a position, the duties of which are equivalent to those
24 of a Senior Executive Service position (within the mean-
25 ing of section 3132(a)(2) of title 5, United States Code).

1 The term covered employee includes an applicant for em-
2 ployment in a covered position and a former covered em-
3 ployee.

4 **C Reg:** (g) Covered employee means any employee
5 of (1) the Capitol Guide Service; (2) the Capitol Police;
6 (3) the Congressional Budget Office; (4) the Office of the
7 Architect of the Capitol; (5) the Office of the Attending
8 Physician; or (6) the Office of Compliance, but does not
9 include an employee: (aa) whose appointment is made by
10 the President with the advice and consent of the Senate;
11 or (bb) whose appointment is made by a Member of Con-
12 gress or by a committee or subcommittee of either House
13 of Congress or a joint committee of the House of Rep-
14 resentatives and the Senate; or (cc) who is appointed to
15 a position, the duties of which are equivalent to those of
16 a Senior Executive Service position (within the meaning
17 of section 3132(a)(2) of title 5, United States Code). The
18 term covered employee includes an applicant for employ-
19 ment in a covered position and a former covered em-
20 ployee.

21 (h) Covered position means any position that is or
22 will be held by a covered employee.

23 (i) Disabled veteran means a person who was sepa-
24 rated under honorable conditions from active duty in the
25 armed forces performed at any time and who has estab-

1 lished the present existence of a service-connected dis-
2 ability or is receiving compensation, disability retirement
3 benefits, or pensions because of a public statute adminis-
4 tered by the Department of Veterans Affairs or a military
5 department.

6 (j) Employee of the Office of the Architect of the
7 Capitol includes any employee of the Office of the Archi-
8 tect of the Capitol, the Botanic Gardens, or the Senate
9 Restaurants.

10 (k) Employee of the Capitol Police Board includes
11 any member or officer of the Capitol Police.

12 (l) Employee of the House of Representatives in-
13 cludes an individual occupying a position the pay of which
14 is disbursed by the Clerk of the House of Representatives,
15 or another official designated by the House of Representa-
16 tives, or any employment position in an entity that is paid
17 with funds derived from the clerk-hire allowance of the
18 House of Representatives but not any such individual em-
19 ployed by any entity listed in subparagraphs (3) through
20 (8) of paragraph (g) above nor any individual described
21 in subparagraphs (aa) through (dd) of paragraph (g)
22 above.

23 (m) Employee of the Senate includes any employee
24 whose pay is disbursed by the Secretary of the Senate,
25 but not any such individual employed by any entity listed

1 in subparagraphs (3) through (8) of paragraph (g) above
2 nor any individual described in subparagraphs (aa)
3 through (ee) of paragraph (g) above.

4 **H Regs:** (n) Employing office means: (1) the per-
5 sonal office of a Member of the House of Representa-
6 tives; (2) a committee of the House of Representatives or
7 a joint committee of the House of Representatives and
8 the Senate; or (3) any other office headed by a person
9 with the final authority to appoint, hire, discharge, and
10 set the terms, conditions, or privileges of the employment
11 of an employee of the House of Representatives or the
12 Senate.

13 **S Regs:** (n) Employing office means: (1) the per-
14 sonal office of a Senator; (2) a committee of the Senate
15 or a joint committee of the House of Representatives and
16 the Senate; or (3) any other office headed by a person
17 with the final authority to appoint, or be directed by a
18 Member of Congress to appoint, hire, discharge, and set
19 the terms, conditions, or privileges of the employment of
20 an employee of the House of Representatives or the Sen-
21 ate.

22 **C Reg:** (n) Employing office means: the Capitol
23 Guide Board, the Capitol Police Board, the Congressional
24 Budget Office, the Office of the Architect of the Capitol,

1 the Office of the Attending Physician, and the Office of
2 Compliance.

3 (o) Office means the Office of Compliance.

4 (p) Preference eligible means veterans, spouses, wid-
5 ows, widowers or mothers who meet the definition of
6 “preference eligible” in 5 U.S.C. § 2108(3)(A)–(G).

7 (q) Qualified applicant means an applicant for a cov-
8 ered position whom an employing office deems to satisfy
9 the requisite minimum job-related requirements of the po-
10 sition. Where the employing office uses an entrance exam-
11 ination or evaluation for a covered position that is numeri-
12 cally scored, the term “qualified applicant” shall mean
13 that the applicant has received a passing score on the ex-
14 amination or evaluation.

15 (r) Separated under honorable conditions means ei-
16 ther an honorable or a general discharge from the armed
17 forces. The Department of Defense is responsible for ad-
18 ministering and defining military discharges.

19 (s) Uniformed services means the armed forces, the
20 commissioned corps of the Public Health Service, and the
21 commissioned corps of the National Oceanic and Atmos-
22 pheric Administration.

23 (t) VEOA means the Veterans Employment Opportu-
24 nities Act of 1998 (Pub. L. 105–339, 112 Stat. 3182).

1 (u) Veterans means persons as defined in 5 U.S.C.
2 § 2108(1), or any superseding legislation.

3 **SEC. 1.103. ADOPTION OF REGULATIONS.**

4 (a) Adoption of regulations. Section 4(c)(4)(A) of the
5 VEOA generally authorizes the Board to issue regulations
6 to implement section 4(c). In addition, section 4(c)(4)(B)
7 of the VEOA directs the Board to promulgate regulations
8 that are “the same as the most relevant substantive regu-
9 lations (applicable with respect to the Executive branch)
10 promulgated to implement the statutory provisions re-
11 ferred to in paragraph (2)” of section 4(c) of the VEOA.
12 Those statutory provisions are section 2108, sections 3309
13 through 3312, and subchapter I of chapter 35, of title 5,
14 United States Code. The regulations issued by the Board
15 herein are on all matters for which section 4(c)(4)(B) of
16 the VEOA requires a regulation to be issued. Specifically,
17 it is the Board’s considered judgment based on the infor-
18 mation available to it at the time of promulgation of these
19 regulations, that, with the exception of the regulations
20 adopted and set forth herein, there are no other “sub-
21 stantive regulations (applicable with respect to the Execu-
22 tive branch) promulgated to implement the statutory pro-
23 visions referred to in paragraph (2)” of section 4(c) of
24 the VEOA that need be adopted.

1 (b) Modification of substantive regulations. As a
2 qualification to the statutory obligation to issue regula-
3 tions that are “the same as the most substantive regula-
4 tions (applicable with respect to the Executive branch)”,
5 section 4(c)(4)(B) of the VEOA authorizes the Board to
6 “determine, for good cause shown and stated together
7 with the regulation, that a modification of such regula-
8 tions would be more effective for the implementation of
9 the rights and protections under” section 4(c) of the
10 VEOA.

11 (c) Rationale for Departure from the Most Relevant
12 Executive Branch Regulations. The Board concludes that
13 it must promulgate regulations accommodating the human
14 resource systems existing in the Legislative branch; and
15 that such regulations must take into account the fact that
16 the Board does not possess the statutory and Executive
17 Order based government-wide policy making authority un-
18 derlying OPM’s counterpart VEOA regulations governing
19 the Executive branch. OPM’s regulations are designed for
20 the competitive service (defined in 5 U.S.C. § 2102(a)(2)),
21 which does not exist in the employing offices subject to
22 this regulation. Therefore, to follow the OPM regulations
23 would create detailed and complex rules and procedures
24 for a workforce that does not exist in the Legislative
25 branch, while providing no VEOA protections to the cov-

ered Legislative branch employees. We have chosen to propose specially tailored regulations, rather than simply to adopt those promulgated by OPM, so that we may effectuate Congress' intent in extending the principles of the veterans' preference laws to the Legislative branch through the VEOA.

SEC. 1.104. COORDINATION WITH SECTION 225 OF THE CONGRESSIONAL ACCOUNTABILITY ACT.

Statutory directive. Section 4(c)(4)(C) of the VEOA requires that promulgated regulations must be consistent with section 225 of the CAA. Among the relevant provisions of section 225 are subsection (f)(1), which prescribes as a rule of construction that definitions and exemptions in the laws made applicable by the CAA shall apply under the CAA, and subsection (f)(3), which states that the CAA shall not be considered to authorize enforcement of the CAA by the Executive branch.

SUBPART B—VETERANS' PREFERENCE—GENERAL PROVISIONS

Sec.

1.105 Responsibility for administration of veterans' preference.

1.106 Procedures for bringing claims under the VEOA.

SEC. 1.105. RESPONSIBILITY FOR ADMINISTRATION OF VETERANS' PREFERENCE.

Subject to section 1.106, employing offices with covered employees or covered positions are responsible for making all veterans' preference determinations, consistent with the VEOA.

1 **SEC. 1.106. PROCEDURES FOR BRINGING CLAIMS UNDER**
 2 **THE VEOA.**

3 Applicants for appointment to a covered position and
 4 covered employees may contest adverse veterans' pref-
 5 erence determinations, including any determination that
 6 a preference eligible applicant is not a qualified applicant,
 7 pursuant to sections 401–416 of the CAA, 2 U.S.C.
 8 §§ 1401–1416, and provisions of law referred to therein;
 9 206a(3) of the CAA, 2 U.S.C. §§ 1401, 1316a(3); and
 10 the Office's Procedural Rules.

SUBPART C—VETERANS' PREFERENCE IN APPOINTMENTS

Sec.

1.107 Veterans' preference in appointments to restricted covered positions.

1.108 Veterans' preference in appointments to non-restricted covered positions.

1.109 Crediting experience in appointments to covered positions.

1.110 Waiver of physical requirements in appointments to covered positions.

11 **SEC. 1.107. VETERANS' PREFERENCE IN APPOINTMENTS TO**
 12 **RESTRICTED POSITIONS.**

13 In each appointment action for the positions of cus-
 14 todian, elevator operator, guard, and messenger (as de-
 15 fined below and collectively referred to in these regula-
 16 tions as restricted covered positions) employing offices
 17 shall restrict competition to preference eligible applicants
 18 as long as qualified preference eligible applicants are
 19 available. The provisions of sections 1.109 and 1.110
 20 below shall apply to the appointment of a preference eli-
 21 gible applicant to a restricted covered position. The provi-
 22 sions of section 1.108 shall apply to the appointment of

1 a preference eligible applicant to a restricted covered po-
2 sition, in the event that there is more than one preference
3 eligible applicant for the position.

4 Custodian—One whose primary duty is the perform-
5 ance of cleaning or other ordinary routine maintenance
6 duties in or about a government building or a building
7 under Federal control, park, monument, or other Federal
8 reservation.

9 Elevator operator—One whose primary duty is the
10 running of freight or passenger elevators. The work in-
11 cludes opening and closing elevator gates and doors,
12 working elevator controls, loading and unloading the eleva-
13 tor, giving information and directions to passengers such
14 as on the location of offices, and reporting problems in
15 running the elevator.

16 Guard—One whose primary duty is the assignment
17 to a station, beat, or patrol area in a Federal building
18 or a building under Federal control to prevent illegal
19 entry of persons or property; or required to stand watch
20 at or to patrol a Federal reservation, industrial area, or
21 other area designated by Federal authority, in order to
22 protect life and property; make observations for detection
23 of fire, trespass, unauthorized removal of public property
24 or hazards to Federal personnel or property. The term

1 guard does not include law enforcement officer positions
2 of the Capitol Police Board.

3 Messenger—One whose primary duty is the super-
4 vision or performance of general messenger work (such as
5 running errands, delivering messages, and answering call
6 bells).

7 **SEC. 1.108. VETERANS' PREFERENCE IN APPOINTMENTS TO**
8 **NON-RESTRICTED COVERED POSITIONS.**

9 (a) Where an employing office has duly adopted a pol-
10 icy requiring the numerical scoring or rating of applicants
11 for covered positions, the employing office shall add points
12 to the earned ratings of those preference eligible appli-
13 cants who receive passing scores in an entrance examina-
14 tion, in a manner that is proportionately comparable to
15 the points prescribed in 5 U.S.C. § 3309. For example,
16 five preference points shall be granted to preference eligi-
17 ble applicants in a 100-point system, one point shall be
18 granted in a 20-point system, and so on.

19 (b) In all other situations involving appointment to
20 a covered position, employing offices shall consider vet-
21 erans' preference eligibility as an affirmative factor in the
22 employing office's determination of who will be appointed
23 from among qualified applicants.

1 **SEC. 1.109. CREDITING EXPERIENCE IN APPOINTMENTS TO**
2 **COVERED POSITIONS.**

3 When considering applicants for covered positions in
4 which experience is an element of qualification, employing
5 offices shall provide preference eligible applicants with
6 credit:

7 (a) for time spent in the military service (1) as an
8 extension of time spent in the position in which the appli-
9 cant was employed immediately before his/her entrance
10 into the military service, or (2) on the basis of actual du-
11 ties performed in the military service, or (3) as a combina-
12 tion of both methods. Employing offices shall credit time
13 spent in the military service according to the method that
14 will be of most benefit to the preference eligible applicant.

15 (b) for all experience material to the position for
16 which the applicant is being considered, including experi-
17 ence gained in religious, civic, welfare, service, and organi-
18 zational activities, regardless of whether he/she received
19 pay therefor.

20 **SEC. 1.110. WAIVER OF PHYSICAL REQUIREMENTS IN AP-**
21 **POINTMENTS TO COVERED POSITIONS.**

22 (a) Subject to (c) below, in determining qualifications
23 of a preference eligible for appointment, an employing of-
24 fice shall waive:

25 (1) with respect to a preference eligible appli-
26 cant, requirements as to age, height, and weight, un-

1 less the requirement is essential to the performance
2 of the duties of the position; and

3 (2) with respect to a preference eligible appli-
4 cant to whom it has made a conditional offer of em-
5 ployment, physical requirements if, in the opinion of
6 the employing office, on the basis of evidence before
7 it, including any recommendation of an accredited
8 physician submitted by the preference eligible appli-
9 cant, the preference eligible applicant is physically
10 able to perform efficiently the duties of the position;

11 (b) Subject to (c) below, if an employing office deter-
12 mines, on the basis of evidence before it, including any
13 recommendation of an accredited physician submitted by
14 the preference eligible applicant, that an applicant to
15 whom it has made a conditional offer of employment is
16 preference eligible as a disabled veteran as described in
17 5 U.S.C. § 2108(3)(c) and who has a compensable service-
18 connected disability of 30 percent or more is not able to
19 fulfill the physical requirements of the covered position,
20 the employing office shall notify the preference eligible ap-
21 plicant of the reasons for the determination and of the
22 right to respond and to submit additional information to
23 the employing office, within 15 days of the date of the
24 notification. The director of the employing office may, by
25 providing written notice to the preference eligible appli-

1 cant, shorten the period for submitting a response with
 2 respect to an appointment to a particular covered position,
 3 if necessary because of a need to fill the covered position
 4 immediately. Should the preference eligible applicant make
 5 a timely response, the highest ranking individual or group
 6 of individuals with authority to make employment deci-
 7 sions on behalf of the employing office shall render a final
 8 determination of the physical ability of the preference eli-
 9 gible applicant to perform the duties of the position, tak-
 10 ing into account the response and any additional informa-
 11 tion provided by the preference eligible applicant. When
 12 the employing office has completed its review of the pro-
 13 posed disqualification on the basis of physical disability,
 14 it shall send its findings to the preference eligible appli-
 15 cant.

16 (c) Nothing in this section shall relieve an employing
 17 office of any obligations it may have pursuant to the
 18 Americans with Disabilities Act (42 U.S.C. § 12101 et
 19 seq.) as applied by section 102(a)(3) of the Act, 2 U.S.C.
 20 § 1302(a)(3).

SUBPART D—VETERANS' PREFERENCE IN REDUCTIONS IN FORCE

Sec.

- 1.111. Definitions applicable in reductions in force.
- 1.112. Application of preference in reductions in force.
- 1.113. Crediting experience in reductions in force.
- 1.114. Waiver of physical requirements in reductions in force.
- 1.115. Transfer of functions.

1 **SEC. 1.111. DEFINITIONS APPLICABLE IN REDUCTIONS IN**
2 **FORCE.**

3 (a) Competing covered employees are the covered em-
4 ployees within a particular position or job classification,
5 at or within a particular competitive area, as those terms
6 are defined below.

7 (b) Competitive area is that portion of the employing
8 office's organizational structure, as determined by the em-
9 ploying office, in which covered employees compete for re-
10 tention. A competitive area must be defined solely in terms
11 of the employing office's organizational unit(s) and geo-
12 graphical location, and it must include all employees with-
13 in the competitive area so defined. A competitive area may
14 consist of all or part of an employing office. The minimum
15 competitive area is a department or subdivision of the em-
16 ploying office within the local commuting area.

17 (c) Position classifications or job classifications are
18 determined by the employing office, and shall refer to all
19 covered positions within a competitive area that are in the
20 same grade, occupational level or classification, and which
21 are similar enough in duties, qualification requirements,
22 pay schedules, tenure (type of appointment) and working
23 conditions so that an employing office may reassign the
24 incumbent of one position to any of the other positions
25 in the position classification without undue interruption.

1 (d) Preference Eligibles. For the purpose of applying
2 veterans' preference in reductions in force, except with re-
3 spect to the application of section 1.114 of these regula-
4 tions regarding the waiver of physical requirements, the
5 following shall apply:

6 (1) "active service" has the meaning given it by
7 section 101 of title 37;

8 (2) "a retired member of a uniformed service"
9 means a member or former member of a uniformed
10 service who is entitled, under statute, to retired, re-
11 tirement, or retainer pay on account of his/her serv-
12 ice as such a member; and

13 (3) a preference eligible covered employee who
14 is a retired member of a uniformed service is consid-
15 ered a preference eligible only if

16 (A) his/her retirement was based on dis-
17 ability—

18 (i) resulting from injury or disease re-
19 ceived in line of duty as a direct result of
20 armed conflict; or

21 (ii) caused by an instrumentality of
22 war and incurred in the line of duty during
23 a period of war as defined by sections 101
24 and 1101 of title 38;

1 (B) his/her service does not include twenty
2 or more years of full-time active service, regard-
3 less of when performed but not including peri-
4 ods of active duty for training; or

5 (C) on November 30, 1964, he/she was em-
6 ployed in a position to which this subchapter
7 applies and thereafter he/she continued to be so
8 employed without a break in service of more
9 than 30 days.

10 The definition of “preference eligible” as set forth in
11 5 U.S.C § 2108 and section 1.102(o) of these regulations
12 shall apply to waivers of physical requirements in deter-
13 mining an employee’s qualifications for retention under
14 section 1.114 of these regulations.

15 **H&S Regs:** (e) Reduction in force is any termi-
16 nation of a covered employee’s employment or the reduc-
17 tion in pay and/or position grade of a covered employee
18 for more than 30 days and that may be required for
19 budgetary or workload reasons, changes resulting from
20 reorganization, or the need to make room for an em-
21 ployee with reemployment or restoration rights. The term
22 “reduction in force” does not encompass a termination or
23 other personnel action: (1) predicated upon performance,
24 conduct or other grounds attributable to an employee, or
25 (2) involving an employee who is employed by the em-

1 plying office on a temporary basis, or (3) attributable to
2 a change in party leadership or majority party status
3 within the House of Congress where the employee is em-
4 ployed.

5 **C Reg:** (e) Reduction in force is any termination
6 of a covered employee's employment or the reduction in
7 pay and/or position grade of a covered employee for more
8 than 30 days and that may be required for budgetary or
9 workload reasons, changes resulting from reorganization,
10 or the need to make room for an employee with reemploy-
11 ment or restoration rights. The term "reduction in force"
12 does not encompass a termination or other personnel ac-
13 tion: (1) predicated upon performance, conduct or other
14 grounds attributable to an employee, or (2) involving an
15 employee who is employed by the employing office on a
16 temporary basis.

17 (f) Undue interruption is a degree of interruption
18 that would prevent the completion of required work by a
19 covered employee 90 days after the employee has been
20 placed in a different position under this part. The 90-day
21 standard should be considered within the allowable limits
22 of time and quality, taking into account the pressures of
23 priorities, deadlines, and other demands. However, work
24 generally would not be considered to be unduly interrupted
25 if a covered employee needs more than 90 days after the

1 reduction in force to perform the optimum quality or
2 quantity of work. The 90-day standard may be extended
3 if placement is made under this part to a program ac-
4 corded low priority by the employing office, or to a vacant
5 position.

6 **SEC. 1.112. APPLICATION OF PREFERENCE IN REDUCTIONS**
7 **IN FORCE.**

8 Prior to carrying out a reduction in force that will
9 affect covered employees, employing offices shall deter-
10 mine which, if any, covered employees within a particular
11 group of competing covered employees are entitled to vet-
12 erans' preference eligibility status in accordance with
13 these regulations. In determining which covered employ-
14 ees will be retained, employing offices will treat veterans'
15 preference as the controlling factor in retention decisions
16 among such competing covered employees, regardless of
17 length of service or performance, provided that the pref-
18 erence eligible employee's performance has not been de-
19 termined to be unacceptable. Provided, a preference eligi-
20 ble employee who is a "disabled veteran" under section
21 1.102(h) above who has a compensable service-connected
22 disability of 30 percent or more and whose performance
23 has not been determined to be unacceptable by an em-
24 ploying office is entitled to be retained in preference to
25 other preference eligible employees. Provided, this section

1 does not relieve an employing office of any greater obliga-
 2 tion it may be subject to pursuant to the Worker Adjust-
 3 ment and Retraining Notification Act (29 U.S.C. § 2101
 4 et seq.) as applied by section 102(a)(9) of the CAA, 2
 5 U.S.C. § 1302(a)(9).

6 **SEC. 1.113. CREDITING EXPERIENCE IN REDUCTIONS IN**
 7 **FORCE.**

8 In computing length of service in connection with a
 9 reduction in force, the employing office shall provide
 10 credit to preference eligible covered employees as follows:

11 (a) a preference eligible covered employee who is not
 12 a retired member of a uniformed service is entitled to cred-
 13 it for the total length of time in active service in the armed
 14 forces;

15 (b) a preference eligible covered employee who is a
 16 retired member of a uniformed service is entitled to credit
 17 for:

18 (1) the length of time in active service in the
 19 armed forces during a war, or in a campaign or ex-
 20 pedition for which a campaign badge has been au-
 21 thorized; or

22 (2) the total length of time in active service in
 23 the armed forces if he is included under 5 U.S.C.
 24 § 3501(a)(3)(A), (B), or (C); and

1 (c) a preference eligible covered employee is entitled
2 to credit for:

3 (1) service rendered as an employee of a county
4 committee established pursuant to section 8(b) of
5 the Soil Conservation and Allotment Act or of a
6 committee or association of producers described in
7 section 10(b) of the Agricultural Adjustment Act;
8 and

9 (2) service rendered as an employee described
10 in 5 U.S.C. § 2105(c) if such employee moves or has
11 moved, on or after January 1, 1966, without a break
12 in service of more than 3 days, from a position in
13 a nonappropriated fund instrumentality of the De-
14 partment of Defense or the Coast Guard to a posi-
15 tion in the Department of Defense or the Coast
16 Guard, respectively, that is not described in 5 U.S.C.
17 § 2105(c).

18 **SEC. 1.114. WAIVER OF PHYSICAL REQUIREMENTS IN RE-**
19 **DUCTIONS IN FORCE.**

20 (a) If an employing office determines, on the basis
21 of evidence before it, that a covered employee is preference
22 eligible, the employing office shall waive, in determining
23 the covered employee's retention status in a reduction in
24 force:

1 (1) requirements as to age, height, and weight,
2 unless the requirement is essential to the perform-
3 ance of the duties of the position; and

4 (2) physical requirements if, in the opinion of
5 the employing office, on the basis of evidence before
6 it, including any recommendation of an accredited
7 physician submitted by the employee, the preference
8 eligible covered employee is physically able to per-
9 form efficiently the duties of the position.

10 (b) If an employing office determines that a covered
11 employee who is a preference eligible as a disabled veteran
12 as described in 5 U.S.C. § 2108(3)(c) and has a compen-
13 sable service-connected disability of 30 percent or more is
14 not able to fulfill the physical requirements of the covered
15 position, the employing office shall notify the preference
16 eligible covered employee of the reasons for the determina-
17 tion and of the right to respond and to submit additional
18 information to the employing office within 15 days of the
19 date of the notification. Should the preference eligible cov-
20 ered employee make a timely response, the highest ranking
21 individual or group of individuals with authority to make
22 employment decisions on behalf of the employing office,
23 shall render a final determination of the physical ability
24 of the preference eligible covered employee to perform the
25 duties of the covered position, taking into account the evi-

1 dence before it, including the response and any additional
 2 information provided by the preference eligible. When the
 3 employing office has completed its review of the proposed
 4 disqualification on the basis of physical disability, it shall
 5 send its findings to the preference eligible covered em-
 6 ployee.

7 (c) Nothing in this section shall relieve an employing
 8 office of any obligation it may have pursuant to the Ameri-
 9 cans with Disabilities Act (42 U.S.C. § 12101 et seq.) as
 10 applied by section 102(a)(3) of the CAA, 2 U.S.C.
 11 § 1302(a)(3).

12 **SEC. 1.115. TRANSFER OF FUNCTIONS.**

13 (a) When a function is transferred from one employ-
 14 ing office to another employing office, each covered em-
 15 ployee in the affected position classifications or job classi-
 16 fications in the function that is to be transferred shall be
 17 transferred to the receiving employing office for employ-
 18 ment in a covered position for which he/she is qualified
 19 before the receiving employing office may make an ap-
 20 pointment from another source to that position.

21 (b) When one employing office is replaced by another
 22 employing office, each covered employee in the affected po-
 23 sition classifications or job classifications in the employing
 24 office to be replaced shall be transferred to the replacing
 25 employing office for employment in a covered position for

1 which he/she is qualified before the replacing employing
 2 office may make an appointment from another source to
 3 that position.

SUBPART E—ADOPTION OF VETERANS’ PREFERENCE POLICIES,
 RECORDKEEPING & INFORMATIONAL REQUIREMENTS.

Sec.

1.116. Adoption of veterans’ preference policy.

1.117. Preservation of records made or kept.

1.118. Dissemination of veterans’ preference policies to applicants for covered
 positions.

1.119. Information regarding veterans’ preference determinations in appoint-
 ments.

1.120. Dissemination of veterans’ preference policies to covered employees.

1.121. Written notice prior to a reduction in force.

4 **SEC. 1.116. ADOPTION OF VETERANS’ PREFERENCE POLICY.**

5 No later than 120 calendar days following Congres-
 6 sional approval of this regulation, each employing office
 7 that employs one or more covered employees or that
 8 seeks applicants for a covered position shall adopt its
 9 written policy specifying how it has integrated the vet-
 10 erans’ preference requirements of the Veterans Employ-
 11 ment Opportunities Act of 1998 and these regulations
 12 into its employment and retention processes. Upon timely
 13 request and the demonstration of good cause, the Execu-
 14 tive Director, in his/her discretion, may grant such an
 15 employing office additional time for preparing its policy.
 16 Each such employing office will make its policies avail-
 17 able to applicants for appointment to a covered position
 18 and to covered employees in accordance with these regu-
 19 lations. The act of adopting a veterans’ preference policy
 20 shall not relieve any employing office of any other respon-

1 sibility or requirement of the Veterans Employment Op-
2 portunity Act of 1998 or these regulations. An employing
3 office may amend or replace its veterans' preference poli-
4 cies as it deems necessary or appropriate, so long as the
5 resulting policies are consistent with the VEOA and these
6 regulations.

7 **SEC. 1.117. PRESERVATION OF RECORDS MADE OR KEPT.**

8 An employing office that employs one or more cov-
9 ered employees or that seeks applicants for a covered po-
10 sition shall maintain any records relating to the applica-
11 tion of its veterans' preference policy to applicants for
12 covered positions and to workforce adjustment decisions
13 affecting covered employees for a period of at least one
14 year from the date of the making of the record or the
15 date of the personnel action involved or, if later, one year
16 from the date on which the applicant or covered employee
17 is notified of the personnel action. Where a claim has
18 been brought under section 401 of the CAA against an
19 employing office under the VEOA, the respondent em-
20 ploying office shall preserve all personnel records relevant
21 to the claim until final disposition of the claim. The term
22 "personnel records relevant to the claim", for example,
23 would include records relating to the veterans' preference
24 determination regarding the person bringing the claim
25 and records relating to any veterans' preference deter-

1 minations regarding other applicants for the covered posi-
 2 tion the person sought, or records relating to the vet-
 3 erans' preference determinations regarding other covered
 4 employees in the person's position or job classification.
 5 The date of final disposition of the charge or the action
 6 means the latest of the date of expiration of the statutory
 7 period within which the aggrieved person may file a com-
 8 plaint with the Office or in a U.S. District Court or,
 9 where an action is brought against an employing office
 10 by the aggrieved person, the date on which such litigation
 11 is terminated.

12 **SEC. 1.118. DISSEMINATION OF VETERANS' PREFERENCE**
 13 **POLICIES TO APPLICANTS FOR COVERED PO-**
 14 **SITIONS.**

15 (a) An employing office shall state in any announce-
 16 ments and advertisements it makes concerning vacancies
 17 in covered positions that the staffing action is governed
 18 by the VEOA.

19 (b) An employing office shall invite applicants for a
 20 covered position to identify themselves as veterans' pref-
 21 erence eligible applicants, provided that in doing so:

22 (1) the employing office shall state clearly on
 23 any written application or questionnaire used for
 24 this purpose or make clear orally, if a written appli-
 25 cation or questionnaire is not used, that the re-

1 requested information is intended for use solely in con-
2 nection with the employing office's obligations and
3 efforts to provide veterans' preference to preference
4 eligible applicants in accordance with the VEOA;
5 and

6 (2) the employing office shall state clearly that
7 disabled veteran status is requested on a voluntary
8 basis, that it will be kept confidential in accordance
9 with the Americans with Disabilities Act (42 U.S.C.
10 § 12101 et seq.) as applied by section 102(a)(3) of
11 the CAA, 2 U.S.C. § 1302(a)(3), that refusal to pro-
12 vide it will not subject the individual to any adverse
13 treatment except the possibility of an adverse deter-
14 mination regarding the individual's status as a pref-
15 erence eligible applicant as a disabled veteran under
16 the VEOA, and that any information obtained in ac-
17 cordance with this section concerning the medical
18 condition or history of an individual will be collected,
19 maintained and used only in accordance with the
20 Americans with Disabilities Act (42 U.S.C. § 12101
21 et seq.) as applied by section 102(a)(3) of the CAA,
22 2 U.S.C. § 1302(a)(3).

23 (3) the employing office shall state clearly that
24 applicants may request information about the em-
25 ploying office's veterans' preference policies as they

1 relate to appointments to covered positions, and
2 shall describe the employing office's procedures for
3 making such requests.

4 (c) Upon written request by an applicant for a cov-
5 ered position, an employing office shall provide the fol-
6 lowing information in writing:

7 (1) the VEOA definition of veterans' "pref-
8 erence eligible" as set forth in 5 U.S.C. § 2108 or
9 any superseding legislation, providing the actual,
10 current definition in a manner designed to be under-
11 stood by applicants, along with the statutory cita-
12 tion;

13 (2) the employing office's veterans' preference
14 policy or a summary description of the employing of-
15 fice's veterans' preference policy as it relates to ap-
16 pointments to covered positions, including any proce-
17 dures the employing office shall use to identify pref-
18 erence eligible employees;

19 (3) the employing office may provide other in-
20 formation to applicants regarding its veterans' pref-
21 erence policies and practices, but is not required to
22 do so by these regulations.

23 (d) Employing offices are also expected to answer
24 questions from applicants for covered positions that are

1 relevant and non-confidential concerning the employing of-
2 fice's veterans' preference policies and practices.

3 **SEC. 1.119. INFORMATION REGARDING VETERANS' PREF-**
4 **ERENCE DETERMINATIONS IN APPOINT-**
5 **MENTS.**

6 Upon written request by an applicant for a covered
7 position, the employing office shall promptly provide a
8 written explanation of the manner in which veterans'
9 preference was applied in the employing office's appoint-
10 ment decision regarding that applicant. Such explanation
11 shall include at a minimum:

12 (a) the employing office's veterans' preference policy
13 or a summary description of the employing office's vet-
14 erans' preference policy as it relates to appointments to
15 covered positions; and

16 (b) a statement as to whether the applicant is pref-
17 erence eligible and, if not, a brief statement of the reasons
18 for the employing office's determination that the applicant
19 is not preference eligible.

20 **SEC. 1.120. DISSEMINATION OF VETERANS' PREFERENCE**
21 **POLICIES TO COVERED EMPLOYEES.**

22 (a) If an employing office that employs one or more
23 covered employees provides any written guidance to such
24 employees concerning employee rights generally or reduc-
25 tions in force more specifically, such as in a written em-

1 ployee policy, manual or handbook, such guidance must
2 include information concerning veterans' preference under
3 the VEOA, as set forth in subsection (b) of this regulation.

4 (b) Written guidances described in subsection (a)
5 above shall include, at a minimum:

6 (1) the VEOA definition of veterans' "pref-
7 erence eligible" as set forth in 5 U.S.C. § 2108 or
8 any superseding legislation, providing the actual,
9 current definition along with the statutory citation;

10 (2) the employing office's veterans' preference
11 policy or a summary description of the employing of-
12 fice's veterans' preference policy as it relates to re-
13 ductions in force, including the procedures the em-
14 ploying office shall take to identify preference eligi-
15 ble employees.

16 (3) the employing office may provide other in-
17 formation in its guidances regarding its veterans'
18 preference policies and practices, but is not required
19 to do so by these regulations.

20 (c) Employing offices are also expected to answer
21 questions from covered employees that are relevant and
22 non-confidential concerning the employing office's vet-
23 erans' preference policies and practices.

1 **SEC. 1.121. WRITTEN NOTICE PRIOR TO A REDUCTION IN**
2 **FORCE.**

3 (a) Except as provided under subsection (c), a cov-
4 ered employee may not be released due to a reduction in
5 force, unless the covered employee and the covered em-
6 ployee's exclusive representative for collective-bargaining
7 purposes (if any) are given written notice, in conformance
8 with the requirements of paragraph (b), at least 60 days
9 before the covered employee is so released.

10 (b) Any notice under paragraph (a) shall include—

11 (1) the personnel action to be taken with re-
12 spect to the covered employee involved;

13 (2) the effective date of the action;

14 (3) a description of the procedures applicable in
15 identifying employees for release;

16 (4) the covered employee's competitive area;

17 (5) the covered employee's eligibility for vet-
18 erans' preference in retention and how that pref-
19 erence eligibility was determined;

20 (6) the retention status and preference eligi-
21 bility of the other employees in the affected position
22 classifications or job classifications within the cov-
23 ered employee's competitive area, by providing:

24 (A) a list of all covered employee(s) in the
25 covered employee's position classification or job
26 classification and competitive area who will be

1 retained by the employing office, identifying
2 those employees by job title only and stating
3 whether each such employee is preference eligi-
4 ble, and

5 (B) a list of all covered employee(s) in the
6 covered employee's position classification or job
7 classification and competitive area who will not
8 be retained by the employing office, identifying
9 those employees by job title only and stating
10 whether each such employee is preference eligi-
11 ble.

12 (7) a description of any appeal or other rights
13 which may be available.

14 (c) The director of the employing office may, in writ-
15 ing, shorten the period of advance notice required under
16 subsection (a), with respect to a particular reduction in
17 force, if necessary because of circumstances not reason-
18 ably foreseeable.

19 (d) No notice period may be shortened to less than
20 30 days under this subsection.

Passed the Senate December 10, 2010.

Attest:

Secretary.

111TH CONGRESS
2^D SESSION

S. CON. RES. 77

CONCURRENT RESOLUTION

To provide for the approval of final regulations issued by the Office of Compliance to implement the Veterans Employment Opportunities Act of 1998 that apply to certain legislative branch employing offices and their covered employees.